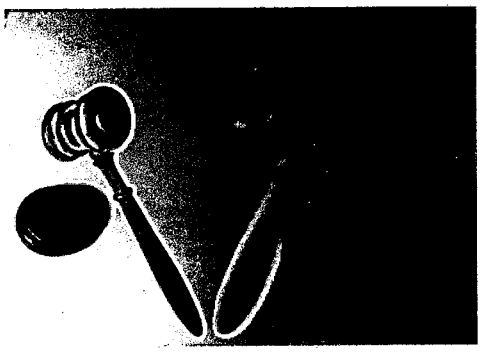
July 1, 2007 Vol.: 07.2

OFFICE OF THE PUBLIC DEFENDER
LAWRENCE M. SULLIVAN, PUBLIC DEFENDER OF THE
STATE OF DELAWARE

COMPENDIUM OF RECENT CRIMINAL-LAW DECISIONS FROM THE DELAWARE SUPREME COURT

Cases Summarized and Compiled by
Nicole M. Walker, Esquire



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DELAWARE SUPREME COURT CASES
APRIL 2007 THROUGH JUNE 2007

TEAGLE V. STATE, (APR. 4, 2007): PLEA AGREEMENTS

D sought to withdraw his "no contest" plea to robbery first degree and related offenses arguing that there was a "fair and just reason" to withdraw under Super.Ct.Crim.R. 32(d) because his attorney and the trial judge incorrectly told him that he faced 9 years minimum imprisonment. He was actually subject to 11 years. The denial of the motion was affirmed as the State subsequently *nolle prossed* a robbery charge to cure the problem. Now, the minimum prison term was only 8 years. D received 20 years plus probation.

BAILEY V. STATE, (APR. 9, 2007): *CORPUS DELECTI*/REVELEVANCE OF STATUTE NOT AT ISSUE

D hid from her husband her pregnancy that resulted from extra-marital affair. She delivered in 6 to 33 degree weather in an unoccupied house that had no running water. She stated that she left the baby on the front doorstep of what she believed was the father's house. The baby was never located and D was convicted of murder first degree by abuse or neglect.

On appeal, the Court held that *mens rea* may be proven by a confession alone. Independent evidence is only required for: a) proof of injury, death or loss, according to the nature of the crime; and (b) proof of criminal means or agency as the cause of the injury, death or loss. Here, the Court ruled, independent evidence existed because: 1) the baby was never located in 3 years; 2) the baby was not found at the doorstep; and 3) D was the last one in possession of the child.

The Court also held that it was harmless error for the trial court to allow an officer to read the Safe Arms for Babies Law into evidence. The State had put forth this "evidence" to show that there were legally sanctioned alternatives to D's actions.

MILLER V. STATE, (APR. 10, 2007): ADMINISTRATIVE SEARCH

Police and probation conducted a "sweep" of Wilmington to "eradicate" public nuisance and quality of life crimes. Officers jumped out of a van, yelled "police" and ordered D to the ground. D had been sitting on the steps of a vacant business. A patdown revealed no weapons or contraband. Officers asked D if he was on probation, he responded that he was. It was then learned that D had an open VOP for a curfew violation. After attempting to verify his address, police found he had moved without informing probation. A search of the residence revealed 30 grams of crack. More drugs were found in his crotch. Subsequently, D was convicted of drug offenses.

On appeal, the Court held that there was reasonable suspicion that D was loitering, thus, a brief detention was warranted. It was then permissible to ask D his probation status. At that point the investigation of loitering changed to an investigation of probationary status. Because the P.O. obtained supervisor authorization to verify address and to conduct the subsequent administrative search, the drugs were admissible.

EDWARDS V. STATE, (APR. 17, 2007): HEARSAY

D and the victim were competitors in the lucrative drug business. The victim purportedly was taking away D's customers. According to the State, that is why D killed the victim. D did not make any statements to police and there was no physical evidence against D. While a witness was present and somewhat implicated D, he also was a drug competitor with a motive to kill the victim.

Pending trial, D shared a cell with Mude and Garnett. The State put Mude on the stand to testify that, in the presence of Garnett, D confessed to killing the victim. D sought to put Garnett on the stand who was going to testify that D never made such a statement in his presence. The trial court prevented Edwards from impeaching Mude's statements with Garnett's testimony finding that it constituted hearsay under D.R.E. 607. D was convicted of murder and weapons offenses.

On appeal, the Court held that because Garnett's testimony was not being offered for the truth of the matter asserted, but was offered to impeach Mude's testimony, it was not hearsay. Thus, the trial court committed reversible error in keeping that evidence out. **REVERSED.**

JOHNSON V. STATE, (APR. 25, 2007): LESSER INCLUDED OFFENSES/ RAPE FOURTH DEGREE/ UNLAWFUL SEXUAL CONTACT SECOND DEGREE

The minor victim arranged to have D pick her up after she ran away from the Terry Center. On their way to her grandmother's house, D and the victim stopped to talk. According to the victim, D then pulled her pants down and inserted his penis into her vagina. The victim reported this a week later. DNA from a condom found at the scene matched blood samples of both the defendant and the victim. However, it could not be determined whether intercourse had occurred. D appealed his rape-second-degree conviction arguing that the trial court erred by failing to instruct the jury on the lesser included offenses of rape fourth degree and unlawful sexual contact second degree.

On appeal, the Court held that since the elements of both rape second degree and rape fourth degree were identical in this case, rape fourth degree was not a lesser included offense and D was not entitled to the instruction.

Further, no instruction was warranted for unlawful sexual contact second degree. The claim of insufficient evidence, without more, does not entitle a defendant to an instruction on a lesser included offense under a plain-error standard.

FLOYD V. STATE, (APR. 25, 2007): SUPREME COURT JURISDICTION/COMMISSIONER'S ORDER

D was convicted of robbery related charges. He had a long history throughout pre trial proceedings of legal incompetency. Finally, at one competency hearing, a Superior Court commissioner found him competent. D did not appeal this ruling to a Superior Court judge as is provided by Rule 62. Since the Supreme Court's appellate jurisdiction is limited to final judgments for Superior Court, the appeal was dismissed.

SCARBOROUOGH V. STATE, (APR. 26, 2007): PLEA AGREEMENTS

According to D, when he pled to drug charges, he was under the impression that, due to an oral side agreement, the State would not seek to declare him a habitual offender if he acted as a police informant. After the State did seek to have him declared a habitual offender, D moved to withdraw his plea. The trial court denied this motion.

On appeal, the Court held that the trial court did not abuse its discretion in denying the motion because it reasonably relied on the written plea agreement and the parties' representations in open court. No one told the judge of the outside agreement. Representations made by the D are presumed to be true. Both the State and D agreed there was an oral agreement. Thus, the Court expressed "grave concerns about the candor of the parties during the plea colloquy here." Failing to disclose oral side agreements, no matter how sensitive their nature may be, does little to advance the cause of justice[.]" The matter was remanded, however, for the trial court to determine whether the conditions of that agreement were met and whether the State was barred from seeking habitual offender status.

REMANDED.

PATTERSON V. STATE, (APR. 26, 2007): CONSPIRACY/NON NARCOTIC-CONTROLLED SUBSTANCE/ AUTHENTICATION

D worked in the infirmary at DCC and supplied one inmate, via transport by another inmate, with Muslim oil, other contraband and Zyrtec and Ambien pills. The inmate doing the transporting was stopped and the contraband was found. The trial court denied D's motion for judgment of acquittal on her Conspiracy Second Degree and Delivery of a Non-narcotic Schedule IV Controlled Substance charges.

D argued that the inmate was not aware that the controlled substances were in the bag so there could not be a conspiracy. On appeal, the Court held that the inmate's claim of ignorance was no defense for Patterson.

D also argued there was no testimony that Ambien was a "non-narcotic" drug. The Court held that under 11 *Del.C.* §4752(a) the State is only required to prove that Ambien is a Schedule IV controlled substance.

Finally, the trial court did not err in allowing the State to introduce a letter found in the bag instructing the inmate not to take too many pills. The State met the lenient authentication burden through a handwriting expert. Further, there was nothing in record that anyone other than police who testified had access to the bag. Thus, chain of custody was satisfied.

MUMFORD V. STATE, (APR. 26, 2007): PROSECUTORIAL COMMENTS

D was convicted of misdemeanor theft based on allegations of home improvement fraud. During closing rebuttal argument, the prosecutor told the jury that "the only time the defendant tried to call the victim to work things out was after he was in handcuffs and asked the police officer to do it. He had to be forced." However, the officer had testified explicitly that D was never handcuffed.

On appeal and under a *Hughes* analysis, the Court held that because: 1) the comment did not go to the central issue of the case; 2) the case was not close; and 3) the court gave a curative instruction, D was not prejudiced. Another set of comments made by the prosecutor included the use of the term "I" which is improper under *Brokenbrough*. The Court found that the use of the term was isolated, thus no error.

BERGEN V. STATE, (APR. 26, 2007): SENTENCING

D and his wife were involved in an "acrimonious divorce and child custody proceeding." After his wife alleged harassment, police found him in possession of a knife, gloves, tarp, shovel, binoculars, diagram of the wife's house, her medical history, a map of the town she lived in and her birth certificate. D pled to Possession of a Deadly Weapon by a Person Prohibited, Aggravated Harassment and Carrying a Concealed Deadly Weapon. He received 5 years plus probation.

He appealed his sentences arguing that the judge: 1) considered information that did not meet minimum reliability standards; 2) imposed an excessive sentence; and 3) exhibited a closed mind. The Court held that there was no abuse of discretion as there was nothing in the record to suggest that the sentencing court ignored D's expert's report and relied solely on the representation of D's probation officer. Further, the sentences were within the statutory range.

BARNETT V. STATE, (MAY 7, 2007): GUILTY PLEAS

D pled to murder second degree (avoiding the death penalty) and a weapons offense in exchange for his testimony against his co defendant. Thirteen months later he filed a motion to withdraw his guilty plea under Super.Ct.Crim.R. 32 (d) for a "fair and just reason" claiming inadequate representation.

On appeal, the Court upheld the lower court's denial of the motion that was based on its finding there to be credibility issues with respect to D's claims regarding his attorney's effectiveness. Further, when the plea was initially entered, the trial court was detailed and careful with the plea colloquy and agreements.

LAWRENCE V. STATE, (MAY 8, 2007): QUESTIONING OF WITNESS BY JUDGE

D, 12 year-old female, was charged with rape fourth degree for allegedly placing a small plastic toy into her four-year-old niece's vagina. At trial, the victim's mom was not able to say whether the crime took place in New Castle County. Thus, the trial judge assisted by questioning her. At one point, the judge told the witness that the prosecutor would explain to her later why he was asking a certain question.

On appeal, D argued that the judge's comments and questions denied her a fair trial. The Court held that the questioning "merely fairly and impartially drew attention to and resolved the witness confusion over and otherwise obvious question." Also, the comments did not show bias.

ROSS V. STATE, (MAY 9, 2007): SUPPRESSION

Police received an anonymous 911 call that "a male wearing gray pants was dealing drugs on the 2900 block of Washington Street." Police drove to the location and saw several black men wearing black pants and black t-shirts. Only D was wearing gray pants. When police pulled up, D walked away at an unhurried pace. Police got out of car and repeatedly asked D "Can we talk to you?" D seemed nervous. Police continued to follow him asking him to talk to them. They then saw D approach an older man, speak to him in a low voice then reach out to him with a cupped hand. Police stopped D. D was later convicted of drug felonies.

On appeal, the Court held that police had reasonable suspicion to stop D as the furtive cupped-hand movements corroborated the veracity of the anonymous tip. C.J. Steele dissented finding that the seizure occurred before D approached the older man. A reasonable person would believe that the officer's repeated requests would not end until he submitted to police.

DOLAN V. STATE: (MAY 10, 2007): BURGLARY/INTENT

The victims went on vacation and had their neighbor watch the house and feed the cat. D called the victims and asked if he could stay at their house. They said no. D then told the neighbor that he did have permission to stay at the house. The victims told the neighbor that that was not true. Later, the neighbor went to the house and D arrived. The neighbor called 911 while D tried to enter. When police arrested D they found a screen on the ground with a large cut in it and a lawn chair under the window. Missing were $200, a drill, credit card and 2 six packs of beer. At trial, D testified he did not intend to steal before he entered but lost control after drinking. Subsequently, D was convicted of burglary second degree at a bench trial.

On appeal, D argued that there was no evidence that he intended to commit theft when he entered and remained unlawfully in the home. Following the rationale of the New York Court of Appeals, the Court found that the language "remains unlawfully" was designed to "broaden the definition of criminal trespass, not to eliminate the requirement that the act constituting criminal trespass be accompanied by contemporaneous intent to commit a crime." Thus, "to be convicted of second degree burglary [under 11 *Del.C.* § 825(a)], a person must form the intent to commit a crime inside before or at the time he enters the dwelling." **REVERSED.**

DAHL V. STATE, (MAY 15, 2007): INDICTMENT/DISTANCE MEASUREMENTS/DEFINITION OF "SCHOOL"

It was alleged that on more than one occasion, D, a convicted sex offender, ate lunch at a picnic table in the Eden Square Shopping Center. Nearby was the New Castle County Dance Academy where anyone from age 2 through adult were instructed on dance. The *warrant* alleged Dahl was there "on or about the 16th of May, 2005." At a case review, he was also told by the prosecutor that the date in question was May 16th. However, the *indictment* alleged "the month of May." On the day of trial, the State was permitted to amend the indictment to include all of April. Evidence was presented by

probation, through information from his home confinement box, that D was not there on May 16th. D was convicted of loitering within 500' of a school.

On appeal, the Court held that it was not prejudicial to D to amend the indictment to include the month of April because his defense was total denial of being at the shopping center and he did not argue at trial that he could have found additional alibi evidence had he received a continuance. Further, there was no error in denying D's motion for judgment of acquittal on the distance element of the offense. There was no evidence as to an estimate of the distance. Instead, the prosecutor led one of the W's through the prosecutor's own hand sketched diagram of the shopping center. The court held this was sufficient for a reasonable fact finder to conclude the distance.

The Court did find, however, that the State failed to establish that the dance academy was a "school" as that term is defined in 11 *Del.C.* § 1112. It failed to prove that the principal object of the dance academy was to teach children under 16. **REVERSED.**

BURTON V. STATE, (MAY 15, 2007): JURY SELECTION/BURGLARY 2ND

Safe Streets was on the prowl in Wilmington when the officers saw two people sitting on a porch. One appeared to match the description given in an unrelated complaint. When the officers stopped the car, the two (one of whom was D) ran down an alley. D pushed passed a woman in the door of her house. He ran through the house to a car where he was apprehended. D was convicted of Burglary Second Degree, Resisting Arrest and Offensive Touching.

At trial, the court had ordered a new jury venire after it ruled that D was using his peremptory challenges in violation of *Batson.* On appeal, the Court held it was not error when the trial court found the following race neutral reasons to be flimsy: juror gave him the "evil eye," "bad vibes" or "was more body language."

On appeal D argued that resisting arrest could not be the underlying offense for the burglary because resisting arrest is not a continuing offense and was completed before D got to the house. The Court held that, without interruption D ran from police and into someone's house with the intent of evading the police. Thus, resisting arrest was a proper predicate for burglary.

CHAMBERS V. STATE, (MAY 21, 2007): COMMUNICATION WITH WITNESS DURING TESTIMONY/JURY INSTRUCTION ON CREDIBILITY

During a brief recess in the State's direct examination of one of its witnesses, the witness asked to speak with the Chief Investigator. After the State obtained permission, he was permitted to do so. Purportedly the witness and the officer talked about the witness' safety. D was convicted of capital murder first degree, possession of a firearm during the commission of a felony and possession of a firearm by a person prohibited. He was sentenced to life plus 15 years.

On appeal, D argued that this was improper as it allowed the State to rehabilitate the witness' testimony. The Court found no abuse of discretion as there was no violation of any rules. Also, there was no prejudice to D as the witness' "revised" testimony after the conversation would have been admissible under 3507 anyway.

The Court also found that the trial judge did not error in failing to give a requested jury instruction that the testimony of two of the State's witnesses should be viewed with caution as they were "admitted participants" or accomplices. There was no evidence in the record to support a finding that they were admitted participants or accomplices.

BROOKS V. STATE, (MAY 22, 2007): CONSPIRACY/POSSESSSION/IMPROPER PROSECUTORIAL CONDUCT/SUPPRESSION HEARING/ HABITUAL OFFENDER

Upon executing a search warrant of D's car and house, police found drugs and guns inside a handbag in the trunk of D's car. D lived with his girlfriend. D was convicted of drug, weapon and conspiracy charges and received 145 years minimum mandatory as a habitual offender.

On appeal, the Court held that the trial court did not err in finding the girlfriend intended to promote or facilitate D's activities as she was fully aware of his activities, thus there was sufficient evidence of a conspiracy. Further, a rational trier of fact could conclude that the guns were within D's immediate reach and were readily accessible.

The Court also found that the prosecutor did not elicit unfairly prejudicial comments by the witnesses. Officer Santos' testimony that he had "covertly observed" D several times while conducting surveillance did not imply familiarity with D on facts unrelated to the arrest. Also, the officer's reference to D as the "target" of the search warrant was unsolicited and accidental and did not imply that she had received tips or complaints about D and drugs.

There was no plain error when the prosecutor used the terms "I" and "we" in his opening statement. Further, the prosecutor's reference to D in closing as a "drug dealer" was not improper as D was charged with trafficking.

The trial court did not err when it chose not to conduct a suppression hearing after the State informed the court that it did not intend to use the statement at issue. D had argued that since the statement could be used for impeachment it deprived him of being able to knowingly, voluntarily and intelligently decide whether to testify.

Finally, the State provided sufficient evidence that D was a Habitual Offender when it offered documents of D's prior convictions and called an expert to testify.

BARTHOLOMEW V. STATE, (MAY 22, 2007): JOINDER/ "GENERIC TESTIMONY"-INSUFFICIENCY OF THE EVIDENCE

D's ex girlfriend's two sons late reported to their dad that D had sexually abused them when they lived their mom and D. One boy testified specifically as to one instance of oral sex and one instance of anal sex. He generically testified that each of these occurred "more than five times" or more than "eight times" but did not specifically describe the other instances. D motion to sever the 23 involving one victim from 2 charges involving another victim was denied. Subsequently, D was convicted of 25 counts of rape first degree, on count of continuous sexual abuse of a child, eight counts of sexual solicitation of a child and one count of indecent exposure first degree.

On appeal, the Court held that the "generic testimony" satisfied a 3 prong test used in other jurisdictions. The witness had: a) described the kinds of acts that occurred

with sufficient specificity; b) testified about the number of acts with sufficient certainty; and c) provided a general time period in which the acts occurred. Also, there was no error when the charges were not severed because they were similar acts against members of the same family during the same period and at the same location.

CRAWLEY V. STATE, (MAY 23, 2007): *D.R.E.* 404 (b)

D met in an alley with the victim for a drug sale. When the victim saw that D had a gun, he turned to get away. Next thing he remembered, he was bleeding. He told police that D shot him and identified him in a photo line up. D was convicted of attempted murder and weapons offenses.

On appeal, D argued he did not receive a fair trial because the victim testified, in contravention of *D.R.E.* 404 (b), that he had been doing drug business with D for some time. The Court held that D's attorney's failure to object to drug-related evidence was not an oversight but "a tactical choice reached early in the case." Further, D cross examined the victim on his drug transactions and the number of his regular clients. Counsel then argued to jury that because of the drug transaction evidence, the victim misidentified D. Thus, there was no plain error.

STEWART V. STATE, (MAY 25, 2007): SENTENCING AND REPEAT OFFENSES

D was convicted of DUI and causing a head-on collision with injuries. On remand from the State's appeal to the Superior Court arguing that D was a repeat offender, the Court of Common Pleas sentenced him as such pursuant to 21 *Del.C.* 4177(d) and 4177(e).

On appeal, D argued that the State failed to establish his prior offense for purposes of 4177(e) in that it only introduced D's driving record which revealed a conviction in Florida but did not reference the conduct underlying that conviction. The Court ruled that D's conviction in Florida was pursuant to a "similar statute" as that term is defined in section 4177(e) (1). It further held that a prior offense under a similar statute may be established without reference to the facts and circumstances of the offense.

JOHNSON V. STATE, (MAY 31, 2007): CONSENT/SUFFICIENCY OF THE EVIDENCE

D, 64, took his girlfriend's mentally disabled fifty-two-year-old sister with him to run errands. He then took her to his basement, touched her, took pictures of her and inserted his fingers into her vagina. The two then went shopping and ate lunch. An examination revealed injuries consistent with both the victim's description of the assault and with consensual sexual conduct. D testified there was no sexual contact and police did not find any pictures in any cameras. After a bench trial, D was convicted of rape fourth degree and unlawful sexual contact third degree.

On appeal, D argued that the State failed to establish guilt beyond reasonable doubt because it failed to prove the acts occurred "without consent" or were offensive to the victim. The Court held that the internal inconsistencies of the victim's testimony and

the inconsistencies between the victim's testimony and the physical evidence did not render the evidence as a whole insufficient.

DRAKE V. STATE, (JUNE 6, 2007): RIGHT TO SELF REPRESENTATION/ "CLAIM-OF-RIGHT" DEFENSE

D's attorney filed a motion to withdraw as D had threatened him. As a result, D sought to represent himself. The court allowed him to do so after conducting the proper colloquy. Weeks later, when trial was scheduled, a second judge sought to have the attorney act as stand-by counsel or to be reassigned as attorney of record. The judge told D that he would have a fair trial if he had an attorney with him. The attorney was then called to the courthouse and the judge sent D down to lock up to apologize. After that, Counsel informed the court that D apologized and wanted to proceed with him as counsel. Later, throughout trial, D was very unhappy with the attorney's representation. D also sought to instruct the jury on the "claim of right" defense under 11 *Del.C.* §847(a) by arguing that the committed the robbery to obtain money owed to him from drug sales.

On appeal, the Court held that D revoked his request to represent himself after apologizing to his attorney and responding affirmatively when the trial judge asked him if he was "okay" with reassigning the attorney. Further, the claim-of-right defense only applies to theft and extortion charges. While theft is an element of robbery, robbery is primarily a physical crime against a person. Thus, the defense does not apply to robbery.

BENTLEY V. STATE: (JUNE 11, 2007): RIGHT TO CONFRONTATION/ LIO-MANSLAUGHTER/ *D.R.E.*403

The victim had bought D's girlfriend Tina a ring. D and Buddy Pyle decided to confront the victim and had Tina drive them over to his house. D testified that he believed they were just going over to fight. A gun was taken by either Buddy or D and one of them shot the victim. There was no physical evidence indicating who did the shooting. D and Buddy pointed to each other as the culprit. An eyewitness identified the shooter as someone who was dressed similar to Buddy. Another witness had, at one point, identified Buddy as the shooter and testified that Tina was ducked down in the car at the time of the shooting. The State did not argue conspiracy or accomplice liability. D was later convicted of murder first degree and related weapons charges.

Prior to trial, Tina told D's attorney that Buddy did it. She then testified that it was D. On cross examination she said she did not see who did it. The State argued that Tina changed her story to exculpate D because she loved him. D wanted to argue that Tina lied for the State because of a new love interest and that she did not perceive the events well because of drug use. The trial court did not allow that questioning as it permitted Tina to exercise her right against self incrimination because she was currently charged with the her new love as a coconspirator in drug charges.

On appeal, the Court ruled that it was error not to allow the line of questioning. Because limitation on cross examination created a substantial danger of prejudice to D's right to a fair trial and because the State could have provided immunity it was reversible error. The Court also ruled that because the issue was who shot the victim and not if the shooter intended to kill the victim, a lesser included instruction on manslaughter was not

warranted. Finally, a video tape of D spitting at a news camera after he was arrested was probative to rebut D's claim that he was cooperative with police. **REVERSED.**

CHAO V. STATE, (JUNE 20, 2007): FELONY MURDER

In 1989, D was convicted of 3 counts of intentional murder, 3 counts of felony murder and other related offenses arising out of an arson that killed 3 members of a family. On appeal, the Court rejected her argument that there was insufficient evidence to support her felony murder convictions because the killings were not "in furtherance of" the arson. However, in 2003, the Court, in *Williams v. State*, held that the State must establish that "the murder occur to facilitate commission of the felony" in order to establish felony murder.

Chao then asked for her felony murder convictions to be vacated under *Williams*. The Court did so noting that Delaware holds that new substantive decisions will be applied retroactively when a defendant has been convicted for acts that are not criminal. On remand, the superior court must decide whether D should be resentenced on the lesser included charges of manslaughter. **REMANDED.**

FRANKLIN V. STATE, (JUNE 28, 2007):JOINDER/ SUFFICIENCY OF THE EVIDENCE

Upon receiving a stolen property report, police stopped D, driver of a car, and his girlfriend, front seat passenger. When the two stepped out of the car, a knife fell to the ground near the girlfriend. D was later convicted of possession of a deadly weapon by a person prohibited, driving without a license and failure to have a valid insurance card. He was acquitted of carrying a concealed deadly weapon.

On appeal, D argued that the trial court erred in failing to sever the person prohibited charge. The Court held that, even if the charge had been severed, likely same result. By acquitting D of the concealed weapon the jury demonstrated that it followed the court's instructions. Finally, inconsistencies between the officer's testimony and her statement in the report were for the jury to consider and not the basis of a mistrial.

EVERETT V. STATE, (JUNE 28, 2007): ADMINISTRATIVE SEARCH

Police responded to an assault report made by Collozo. Collozo said that a man "just struck her in the face." She pointed to a car that the assailant had used, identified D and said she saw D with a gun in his car a week earlier. D refused to consent to a search of his car. The police then called his probation officer who asked him about the gun. D did not respond. After getting his supervisor's approval for a search, the P.O. found a 9mm with an obliterated serial number in car. D convicted of weapons charges.

On appeal, D argued the evidence should have been suppressed because the search was conducted by the P.O. solely at the request of law enforcement. The Court held that the P.O. obtained independent evidence upon questioning D and followed regulations so the search was valid.